



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

0000003

MAR 17 1995

REPLY TO THE ATTENTION OF:

HRE-8J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

EPA Region 5 Records Ctr.



253903

Ms. Mary M. Biagioli
Pickrel, Schaeffer, & Ebling
2700 Kettering Tower
40 North Main Street
Dayton, Ohio 45423-2700

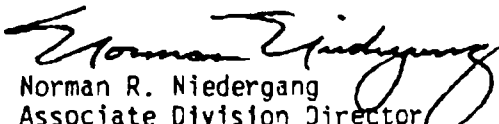
Re: Consent Agreement and Final Order
Daylon Electroplate, Incorporated
Docket No. V-W-014-94
OHD 004 278 628

Dear Ms. Biagioli:

This letter is to acknowledge receipt of the Consent Agreement and Final Order signed by Dayton Electroplate, Incorporated. A fully executed copy of the Consent Agreement and Final Order is enclosed for your files.

Your cooperation in resolving this matter is appreciated.

Sincerely yours,


Norman R. Niedergang
Associate Division Director
Office of RCRA

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:)	DOCKET NO. V-W-014-94
DAYTON ELECTROPLATE, INC.)	CONSENT AGREEMENT AND
1030 VALLEY STREET)	FINAL ORDER
DAYTON, OHIO 45404)	
EPA ID No.: OHD 004 278 628)	

I. PREAMBLE

On July 6, 1994, a Complaint was filed in this matter pursuant to Section 3008(a) of the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. Section 6928(a), and the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 CFR Part 22. The Complainant is the Associate Division Director, Office of RCRA, Waste Management Division, Region V, United States Environmental Protection Agency (U.S. EPA). The Respondent is Dayton Electroplate, Inc., Dayton, Ohio.

II. STIPULATIONS

The parties, desiring to settle this action, enter into the following stipulations:

1. Respondent has been served with a copy of the Complaint, Findings of Violation and Compliance Order (Docket No. V-W-014-94) in this matter. The Complaint is incorporated herein by reference.

2. Respondent is a Ohio Corporation whose registered agent in the State of Ohio is Gordon H. Savage. Respondent owns and operates a facility whose business is located at 1030 Valley Street, Dayton, Ohio.

3. Respondent admits that Complainant has jurisdiction to issue the Complaint in this matter and jurisdiction to enter into this Consent Agreement

and Final Order (CAFO). Respondent agrees not to contest such jurisdiction in any proceeding to enforce the provisions of this CAFO.

4. Respondent neither admits nor denies the specific factual allegations contained in the Complaint, other than admissions made in Respondent's Answer.

5. Respondent explicitly withdraws its request for a hearing and waives any and all rights under any provisions of law to a hearing on the allegations contained in the Complaint or to challenge the terms and conditions of this CAFO.

6. If the Respondent fails to comply with any provision contained in this CAFO, Respondent waives any rights it may possess in law or equity to challenge the authority of the U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with the CAFO and/or to seek an additional penalty for the noncompliance.

7. Respondent consents to the issuance of the Final Order hereinafter set forth and hereby consents to the payment of a civil penalty of FIVE THOUSAND, FOUR HUNDRED DOLLARS (\$5,400). Respondent agrees not to claim or attempt to claim a Federal income tax deduction or credit covering all or any part of the cash civil penalty paid to the U.S. Treasury. In any action to collect any penalty amount required by this Final Order, the validity, amount and appropriateness of the penalty due shall not be subject to review.

8. Respondent shall give notice and a copy of this CAFO to any successor in interest prior to any transfer of ownership or operational control of the Facility. This CAFO is binding on Respondent and any successors in interest.

9. On June 7, 1991, the State of Ohio was granted final authorization by the Administrator of the U.S. EPA, pursuant to Section 3006(b) of RCRA, 42 U.S.C. Section 6926(b), to administer a hazardous waste program in lieu of the

Federal program. Section 3008 of RCRA, 42 U.S.C. Section 6928, provides that the U.S. EPA may enforce State regulations in those States authorized to administer a hazardous waste program.

10. Nothing in this CAFO shall be construed to relieve Respondent from its obligation to comply with all applicable Federal, State and local statutes and regulations, including the RCRA Subtitle C requirements at 40 CFR Parts 260 through 270.

11. This CAFO shall become effective on the date it is signed by the Director, Waste Management Division.

III. FINAL ORDER

Based on the foregoing stipulations, the Parties agree to the entry of the following Final Order:

A. Respondent shall, immediately upon the effective date of this CAFO, for all future shipments of hazardous waste, provide the proper LDR Notification pursuant to 40 CFR §268.7(a)(1) and RCRA.

B. Respondent shall retain in its files copies of the nine LDR Notifications which the U.S. EPA transmitted to the respondent in a letter dated February 10, 1995, in the manner as required by 40 CFR §268.7(a)(7) and RCRA.

C. Respondent shall pay a civil penalty in the amount of FIVE THOUSAND, FOUR HUNDRED DOLLARS (\$5,400) plus interest of THIRTY-FOUR DOLLARS AND EIGHTY-EIGHT CENTS (\$34.88) in four installments. Each payment will be comprised of penalty component of ONE THOUSAND, THREE HUNDRED FIFTY DOLLARS (\$1,350). Interest has been computed for payments due on or before sixty (60) days at SIX DOLLARS AND SEVENTY-FIVE CENTS (\$6.75), ninety (90) days at TEN DOLLARS

AND THIRTEEN CENTS (\$10.13), and one hundred twenty (120) days at EIGHTEEN DOLLARS (\$18.00) after the effective date of this Final Order. Scheduled payments at sixty (60), ninety (90), and one hundred twenty (120) days shall bear interest at the rate of 3.0% established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717(a)(1) for the fiscal year 1995. Accrual of interest shall begin the date the Final Order is mailed to Respondent and accrue to penalty amount scheduled for payment at sixty (60), ninety (90), and one hundred twenty (120) days.

Payment shall be made by certified or cashier's check payable to the Treasurer of the United States of America and shall be mailed to:

U.S. EPA, Region 5
Regional Finance Office
P.O. Box 70753
Chicago, Illinois 60673

The name of the Respondent and the Docket Number of this proceeding shall be clearly marked on the face of the check. Copies of the transmittal of the payment shall be sent to: the Regional Hearing Clerk, Planning and Management Division (M-19J); the Solid Waste and Emergency Response Branch Secretary, Office of Regional Counsel (CS-30A); and Duncan Campbell of the RCRA Enforcement Branch (HRE-8J).

IV. AMOUNTS OVERDUE

Pursuant to 31 U.S.C. Section 3717, Respondent shall pay the following amounts on any amount overdue under this Consent Agreement and Final Order (CAFO):

A. **Interest.** Any unpaid portion of the assessed penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. Section 3717(a)(1). Interest shall begin to accrue from the date a copy of this CAFO is mailed to Respondent, provided, however, that no interest

shall be payable on any portion of the assessed penalty that is paid within thirty (30) days of the mailing.

B. **Monthly Handling Charge.** Respondent shall also pay a late payment handling charge of \$20.00 on any late payment, with an additional charge of \$10.00 for each subsequent 30-day period over which an unpaid balance remains.

C. **Non-Payment Penalty.** On any portion of the civil penalty more than ninety (90) days past due, Respondent shall pay a non-payment penalty of six percent (6%) per annum, which shall be calculated from the day the underlying penalty first became ninety (90) days past due. This non-payment penalty is in addition to charges which accrue or may accrue under (A) and (B) of this Section.

V. PENALTIES FOR NONCOMPLIANCE

Failure to comply with any requirement of this Final Order may subject Respondent to liability for a penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for each day of continued non-compliance with the terms of the Final Order. U.S. EPA is authorized to assess such penalties pursuant to RCRA Section 3008(c).

VI. EFFECT OF SETTLEMENT

A. This Consent Agreement and Final Order (CAFO) constitutes the entire settlement between the parties, and constitutes final disposition of the Complaint filed in this case and stipulations hereinbefore recited. All prior discussions, negotiations, and document drafts are merged herein.

B. Each party shall bear its own costs and attorneys' fees in the action resolved by this CAFO.

C. Respondent's obligations under this CAFO shall end when it has satisfied all of the requirements of Section III of this CAFO (including full payment of the civil penalty plus interest) and, if applicable, full payment of any amounts overdue pursuant to Section IV.

D. Respondent waives any right it may have pursuant to 40 CFR 22.08 to be present during discussions with, or to be served with and reply to, any memorandum or communication addressed to the Director, Waste Management Division, or his superiors, where the purpose of such discussion, memorandum or communication is to persuade such an official to accept and issue the Consent Agreement and Final Order.

E. Respondent knowingly and explicitly waives its rights pursuant to 40 CFR Part 22 to a hearing on this penalty assessment, and to judicial review of this administrative penalty assessment.

VII. RESERVATION OF RIGHTS

Notwithstanding any other provision of this Final Order, U.S. EPA expressly reserves any and all rights to bring an enforcement action pursuant to Section 7003 of RCRA, 42 U.S.C. Section 6973, or other statutory authority should U.S. EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at the Facility may present an imminent and substantial endangerment to health or the environment. U.S. EPA also expressly reserves the right: (1) for any matters other than violations alleged in the Complaint, to take any action authorized under Section 3008 of RCRA; (2) to enforce compliance with the applicable provision of the Ohio Administrative Code; (3) to take any action under 40 CFR Parts 124 and 270; and (4) to enforce compliance with this Consent Agreement and Final Order.

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VIII. SIGNATORIES

Each undersigned representative of a Party to this Consent Agreement and Final Order consisting of SEVEN (7) pages certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to legally bind such party to this document.

Agreed to this 2nd day of March, 1995.

Dayton Electroplate, Inc.

By Charles J. Borum

Charles J. Borum, President
Dayton Electroplate, Inc.
(Respondent)

Agreed to this 14th day of March, 1995.

By Norman R. Niedergang

Norman R. Niedergang, Associate Division Director
Waste Management Division
U.S. Environmental Protection Agency, Region V
(Complainant)

The above agreed and consented to, it is so ordered

this 14th day of March, 1995.

William E. Muno
William E. Muno, Director
Waste Management Division
U.S. Environmental Protection Agency
Region V

IN THE MATTER OF:
DAYTON ELECTROPLATE, INC.
1030 VALLEY STREET
DAYTON, OHIO 45404
DOCKET NO. V-W-014-94

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing CAFO to be served upon the person designated below on the date below, by causing said copy to be deposited in the U.S. Mail, First Class and certified-return receipt requested, postage prepaid, at Chicago, Illinois in an envelope addressed to:

Ms. Mary M. Biagioli
Pickrel, Schaeffer, & Ebling
2700 Kettering Tower
40 North Main Street
Dayton, OH 45423-2700

I have further caused the original of the CAFO and this Certificate of Service to be served in the Office of the Regional Hearing Clerk, located in the Planning and Management Division, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, Illinois 60604, on the date below.

This is said person's last known address to the subscriber.

Dated this 17th day of March 1995

Annita Perry
Secretary, RCRA Enforcement Branch
U.S. EPA, Region 5